

The Honorable Ricardo S. Martinez

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

WILLIAM F. RUSSELL,
Plaintiff,

v.

ALAN HILBURG; individually; HILBURG &
ASSOCIATES, LLC; a limited liability company;
ALAN HILBURG & ASSOCIATES; HAI
HOLDINGS, INC., a corporation; PORTER
NOVELLI, INC., a corporation, d/b/a Porter
Novelli Consulting (aka PNConsulting); and
JOHN DOES and/or JANE DOES 1-3, presently
unknown parties,

Defendants.

No. C08-0217 RSM

DECLARATION OF WILLIAM F.
RUSSELL IN SUPPORT OF
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT OF
DISMISSAL OF AFFIRMATIVE
DEFENSES

ORAL ARGUMENT REQUESTED
HEARING DATE: February 6, 2009

I, William F. Russell, hereby state and declare:

That I am the plaintiff in the above captioned matter.

That I make this declaration based on personal knowledge.

DECLARATION OF WILLIAM F. RUSSELL IN
SUPPORT OF PLAINTIFF'S MOTION FOR
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AFFIRMATIVE DEFENSES

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1 **I. My Relationship to Alan Hilburg**

2 I had originally met Alan Hilburg fifteen or twenty years ago at a conference that he
3 organized and at which I spoke. This was many years before we entered into a business
4 relationship.

5
6 After a hiatus of a couple of years, Mr. Hilburg called me when he learned I was in his
7 then home town ofn Dallas (I was there for a basketball game). We became good friends. For
8 example, I was the best man at his wedding with Laurie Hilburg (from whom he is now
9 divorced). When his son was born, I was given the honor of holding his son during the Jewish
10 circumcision ceremony, which I was given to understand was a high honor. We visited each
11 other frequently in our respective homes even though we lived in different parts of the country.
12 I stayed in his home a couple of times, at least. I have known him for anywhere between 15-20
13 years. He had told me about his high-powered responsibilities—that he acted as the public
14 relations person for Love Canal (Occidental Petroleum), the Exxon Valdez oil spill, and
15 managed the public relations for a casino owner who was receiving bad publicity because he
16 had thrown a birthday party for Hitler. He also said he was the originator of the Wendy's
17 "Where's the Beef" commercial. Mr. Hilburg also told me he had a college degree from
18 Franklin College [later on he attempted to negotiate an honorary doctorate from this college to
19 me].
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22 I absolutely trusted him when he offered to act as my agent in procuring personal
23 service contracts, appearances, and endorsements; and I relied on him, going so far as to allow
24 him to sign my name to contracts for my services and to receive all of the money paid.
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1 The arrangement that was made was that Mr. Hilburg would deposit my earnings in a
2 separate bank account or accounts and would remit to me regularly (monthly) holding back only
3 his 10% commission. At the time, I needed additional sources of funds because of some
4 business difficulties, namely, Center Court Productions, Inc., which had failed. My attorney,
5 Donald J Horowitz, was negotiating pay-offs of various debts. Mr. Hilburg, because of our
6 friendship, knew of my financial difficulties and he thought it would be a good idea for me to
7 hire him to negotiate service contracts, particularly because he was so well-connected, according
8 to his representations.
9

10 Mr. Hilburg also told me he had a college degree from Franklin College [later on he
11 attempted to negotiate an honorary doctorate from this college to me].
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13 II. Continuous Contract

14 I really was not aware of when the formal written contract entered into on August 1, 1998
15 formally ended. Mr. Hilburg never asserted to me that it was terminated. The services I
16 rendered continued on as if nothing had happened, as did his promotions of me.
17

18 III. The March 2006 Contact

19 Distributions to me from my earnings by Mr. Hilburg were frequently late and were
20 sporadic. Furthermore, personality difficulties arose because he would book events for me and
21 simply tell me to be there at a certain place and time to do certain tasks, without discussing it
22 with me ahead of time, sometimes not even telling me what was being earned. He also made
23 allegations that I was financially irresponsible, which I did not care for either. For example, I
24 had directed Mr. Hilburg to lend to a friend of mine in need, Ronnie Watts, \$20,000 of my
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26

1 funds. Mr. Hilburg refused to do that until I became very adamant that that was what I wanted
2 to do with my money. He basically treated me as a child even though it was my money

3 I only had a general idea of how much I was earning because, for the most part, the
4 payments did not go to me nor did I see the contracts he entered into on my behalf as a general
5 rule. However, I did know that I was earning substantial amounts, enough to cover the monthly
6 distributions he was supposed to make. The new contract was entered into mostly just to end
7 what I felt to be paternalism on his part.
8

9 Therefore, in discussions with Don Horowitz about how to draft that new contract, I
10 explained I wanted the contract drafted in such a way that it would allow the payments to come
11 directly to me, so that from those payments I could then pay Mr. Hilburg his 10% commission.
12 This was to be different from the original arrangement, in which payments went directly to Mr.
13 Hilburg, he took his share, and then paid me my share.
14

15 IV. Knowledge of Misappropriation of Funds

16 I had no idea that Mr. Hilburg was not remitting to me fully, not until well after I
17 terminated the contract in September, 2006. I terminated the contract because it became too
18 frustrating to deal with Mr. Hilburg in regard to the issue of getting accounting documents for
19 my own tax purposes and for the purpose of knowing, generally, what I had earned and how
20 much Mr. Hilburg had deducted from it for his fees and costs. We grew tired of all of the
21 excuses for not providing the accountings.
22

23 V. Investments

24 I did not know about, nor did authorize, any investments of my funds in anything other
25 than bank accounts. I first learned about allegations that Mr. Hilburg had invested my money
26

1 and that funds were probably lost in these investments well after the contract had been
2 terminated. I had never even heard of Beacon Energy Fund nor of GreenCell until after the
3 contract was terminated and Mr. Horowitz was trying to get a full accounting from Mr. Hilburg
4

5 **VI. Settlement Allegation**

6 I see that Mr. Hilburg is alleging that I agreed to settle matters with him in return for ten
7 \$10,000 post-dated checks. This is not true. At no time did I agree to or authorize anyone to
8 "settle" with Mr. Hilburg, because I wanted a full accounting for all funds paid to him for my
9 services as well as accounting for all distributions he made to me or to others on my behalf..
10

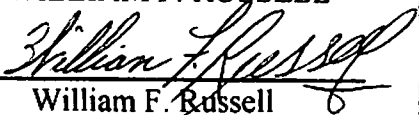
11 **VII. Allegations of My Misconduct**

12 At no time did Mr. Hilburg accuse me of any acts of dishonesty toward him or anyone
13 else.

14 I hereby declare under penalty of perjury under the laws of the State of Washington that
15 the above is true to the best of my knowledge and belief.
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17 Dated this 8th day of January, 2009 at Seattle, Washington.
18

19 WILLIAM F. RUSSELL

20 By: 
21 William F. Russell
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